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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Tobias Gotbaum, Nathaniel Gotbaum,) No. CV-08-0937-PHX-DGC
Ella Gotbaum, the natural children of)
Carol Anne Gotbaum by and through) **ORDER**
their Next Friend, Noah Gotbaum; and)
the Estate of Carol Anne Gotbaum,)

Plaintiffs,

vs.

City of Phoenix, a public entity; City of)
Phoenix Police Department; Chief Jack)
Harris; Jason K. Toth; Andrew B.)
Wonya; Duane A. Rigg, Jr.; Dick C.)
Richards; and Terri L. Klepper,)

Defendants.

Plaintiffs have filed a motion to transfer this case to Tucson. Dkt. #13. Defendants have filed motions to dismiss all pre-death suffering claims and to dismiss the City of Phoenix Police Department as a defendant. Dkt. ##11, 12. The motions have been fully briefed. For reasons stated below, the Court will deny Plaintiffs' motion to transfer, grant Defendants' motions to dismiss the Phoenix Police Department, and deny Defendants' motion to dismiss Plaintiffs' claim for pre-death pain and suffering.¹

¹ Plaintiffs' request for oral argument is denied because the parties have thoroughly briefed the issues and oral argument will not aid the Court's decision. *See Mahon v. Credit Bureau of Placer County, Inc.*, 171 F.3d 1197, 1200 (9th Cir. 1999).

1 **I. Background.**

2 Plaintiffs' complaint arises from the unfortunate death of Carol Anne Gotbaum while
3 in the custody of the Phoenix Police Department at Sky Harbor Airport in Phoenix, Arizona.
4 The facts, in brief, are as follows: On September 28, 2007, Mrs. Gotbaum arrived at Sky
5 Harbor Airport on a flight from New York City. Dkt. #7 at 6. She planned to catch a
6 connecting flight to Tucson, where she intended to enter an alcohol rehabilitation program.
7 *Id.* Mrs. Gotbaum missed her connecting flight, but was told she could catch the next flight
8 to Tucson, leaving in approximately two hours. *Id.* at 8. Mrs. Gotbaum drank excessively
9 while waiting for the next flight. *Id.* When she returned to the gate to board the flight, she
10 was denied a seat on the plane. *Id.* Mrs. Gotbaum became highly agitated, collapsed to the
11 floor, threw her Blackberry, and then ran through the terminal yelling that she was not a
12 terrorist. *Id.* A female TSA employee tried to calm her. *Id.* at 9. When three Phoenix Police
13 officers arrived, they forced Mrs. Gotbaum to the floor, handcuffed her, and escorted her to
14 the airport security office. *Id.* at 9-10.

15 Mrs. Gotbaum was searched and placed in a holding cell alone. *Id.* at 10. The officers
16 used leg restraints to chain her to a fixed bolt in the cell, and seated her on a bench with her
17 hands still cuffed behind her. *Id.* Sometime later, Mrs. Gotbaum was found in the cell
18 unconscious, sitting on the floor, with her hands under her chin and the leg iron chain across
19 her neck. *Id.* Cardiopulmonary resuscitation efforts were not successful. *Id.*

20 The events surrounding Mrs. Gotbaum's death received extensive local and national
21 press coverage. Plaintiffs, who consist of Mrs. Gotbaum's three minor children and her
22 estate, assert claims against the City of Phoenix, the Phoenix Police Department, and the
23 police officers who were involved in these events. Plaintiffs' claims include negligence,
24 gross negligence, and violation of Mrs. Gotbaum's constitutional rights under 42 U.S.C.
25 § 1983. *Id.* at 14-23.

26 **II. Motion to Transfer Venue.**

27 Plaintiffs contend that the publicity surrounding Mrs. Gotbaum's death and the
28 reaction of certain members of the Phoenix community make it impossible for them to

1 receive a fair trial. They ask the Court to transfer this case to its Tucson Division. Congress
 2 has stated that for “the convenience of parties and witnesses, in the interest of justice, a
 3 district court may transfer any civil action to any other district or division where it might
 4 have been brought.” 28 U.S.C. § 1404(a). Plaintiffs bear the burden of showing that a
 5 transfer is warranted. *See Warfield v. Gardner*, 346 F. Supp. 2d 1033, 1043 (D. Ariz. 2004).

6 **A. Legal Standard.**

7 “[I]f pretrial publicity makes it impossible to seat an impartial jury, then the trial judge
 8 must grant the . . . motion for a change of venue.” *Casey v. Moore*, 386 F.3d 896, 906 (9th
 9 Cir. 2004). Courts considering a change of venue based on pretrial publicity have recognized
 10 two kinds of jury prejudice: presumed prejudice, where the record demonstrates that the
 11 community has been saturated with prejudicial and inflammatory media publicity, and actual
 12 prejudice, where jurors actually called for the trial demonstrate that they possess partiality
 13 and hostility that cannot be laid aside. *See Harris v. Pulley*, 885 F.2d 1354, 1361, 1363 (9th
 14 Cir. 1988). Plaintiffs do not attempt to show actual juror prejudice, nor could they before the
 15 jury panel has been called in this case. Plaintiffs instead ask the Court to presume juror
 16 prejudice, arguing that their evidence shows a pervasive hostility in Phoenix that will deny
 17 them a fair trial.

18 Before turning to Plaintiffs’ arguments, the Court notes two general principles. First,
 19 “[t]he presumed prejudice principle is rarely applicable and is reserved for ‘an extreme
 20 situation.’” *Id.* at 1361 (citation omitted); *see L.A. Mem’l Coliseum Comm’n v. NFL*, 726
 21 F.2d 1381, 1400 (9th Cir. 1984) (court should presume prejudice only where the community
 22 has been “‘utterly corrupted by press coverage’”) (citation omitted). Second, courts are
 23 reluctant to presume prejudice too early in a case. As a general rule, “the effect of pretrial
 24 publicity can ‘be better determined after the voir dire examination of the jurors.’” *Narten v.*
 25 *Eyman*, 460 F.2d 184, 187 (9th Cir. 1969) (citation omitted).

26 **B. Prejudice in this Case.**

27 Plaintiffs do not claim that the Phoenix community has been saturated with
 28 inflammatory pretrial publicity. They do not catalogue newspaper, radio, or television

1 reports to demonstrate the kind of pervasive and unfair publicity that typically is relied on
2 for motions to transfer. Plaintiffs instead provide the Court with lengthy copies of blog
3 entries from several websites – AZCentral.com, TucsonCitizen.com, and AZStarNet.com.
4 Dkt. ##13-2, 13-3, 13-4. Many of these blog comments disparage the Gotbaum family and
5 this lawsuit. Plaintiffs also cite an Arizona Republic newspaper article dated November 15,
6 2007, in which a Phoenix Police Department spokesperson is quoted as saying that comments
7 he heard about Mrs. Gotbaum were uglier than those he heard about two men charged with
8 serial murders. Dkt. #13-2 at 86. Plaintiffs cite an article in Phoenix Magazine reporting that
9 the Arizona Republic suspended blog comments related to Mrs. Gotbaum because reader
10 reactions were so vicious. And Plaintiffs note that the County Sheriff called this case
11 “garbage” in a news conference, and that the County Attorney publicly announced that his
12 office found no criminal wrongdoing on the part of the police officers involved in Mrs.
13 Gotbaum’s detention. Dkt. ##13 at 7, 22 at 2-3.

14 The Court has reviewed the materials submitted by Plaintiffs. To be sure, some of the
15 blog statements are disturbingly malicious. The question before the Court, however, is not
16 whether the blog authors could serve as fair and impartial jurors, but whether an impartial
17 jury can be selected from among the 1.6 million citizens, from five counties, who make up
18 the Court’s jury pool.

19 Jury pool members are presumed to be impartial. *See Irvin v. Dowd*, 366 U.S. 717,
20 723 (1961). To overcome this presumption, Plaintiffs must show saturating and
21 inflammatory press coverage that would reach virtually all members of the jury pool and lead
22 a court to conclude that the pool as a whole has been adversely influenced. Plaintiffs’
23 selected blog entries do not make this showing. Although they clearly show that some
24 individuals in unknown locations are not fair minded about this case, Plaintiffs provide no
25 reason to conclude that the comments of these bloggers represent the views of the jury pool
26 at large. Nor do Plaintiffs provide reason to believe that the blog comments have been
27 widely read.
28

1 The few articles identified by Plaintiffs and the statements of the Sheriff and County
2 Attorney do not rise to the level of saturating and inflammatory media coverage. They do
3 not constitute a “barrage of inflammatory publicity immediately prior to trial amounting to
4 a huge . . . wave of public passion.” *Harris*, 885 F.2d at 1362 (quotation marks and citation
5 omitted). The articles are largely factual, as is the report of the County Attorney’s
6 conclusion, and Plaintiffs present no evidence that the Sheriff’s comment received
7 widespread publicity.

8 Plaintiffs claim that voir dire will not enable the Court to exclude biased jurors. They
9 base this contention on comments in a few blogs expressing a desire to serve on the jury in
10 this case. Dkt. #13 at 6-7. But the authors of such comments have no ability to maneuver
11 their way onto the randomly-selected jury panel, nor can the Court presume that this handful
12 of hostile bloggers will somehow be selected from among 1.6 million potential jurors.
13 Moreover, the comments do not suggest that the bloggers would be willing to lie under oath
14 in a federal court in order to be placed on the jury, nor that carefully crafted voir dire
15 questions would fail to reveal their biases.

16 Plaintiffs are entitled to a fair trial before an impartial jury. The Court is confident
17 that such a jury can be selected from the Phoenix Division jury pool. The Court therefore
18 will deny Plaintiffs’ motion to transfer.²

19 **III. Pre-Death Suffering Under Section 1983.**

20 Plaintiffs seek to recover damages for the pre-death pain and suffering of Mrs.
21 Gotbaum. Defendants contend that such damages cannot be recovered under section 1983.
22 This motion presents a question of law largely unrelated to the unique facts of this case.

23
24 ² Plaintiffs briefly argue that this case should be transferred to Tucson for
25 convenience, but they provide no support for this contention. Dkt. ##13 at 10-11, 22 at 4-5.
26 None of the witnesses, evidence, or parties are located in Tucson, and none of the relevant
27 events occurred there. The Court has considered the relevant factors under section 1404(a)
28 – Plaintiffs’ choice of forum, the extent of the parties’ contacts with Tucson, the availability
of non-party witnesses, and the accessibility of evidence – and concludes that a trial in
Phoenix clearly would be more convenient. *See Jones v. GNC Franchising, Inc.*, 211 F.3d
495, 498-99 (9th Cir. 2000).

1 Section 1983 was enacted after the Civil War to remedy widespread violations of civil
 2 rights in the South. The statute creates a civil cause of action for any person whose federal
 3 rights have been deprived by a person acting under color of law. 42 U.S.C. § 1983. The
 4 statute does not, however, specify the remedies available to such a person, nor does it address
 5 whether the cause of action survives the death of the injured person. *Id.* Congress instead
 6 has directed courts to “turn to ‘the common law, as modified and changed by the constitution
 7 and statutes of the [forum] State,’ as long as these are ‘not inconsistent with the Constitution
 8 and laws of the United States.’” *Robertson v. Wegman*, 436 U.S. 584, 588 (1978) (quoting
 9 42 U.S.C. § 1988). Courts thus look to forum state statutes for the remedies available under
 10 section 1983. *Id.* at 589. In doing so, however, courts must confirm that the forum state
 11 remedies comport with the Constitution and laws of the United States. “Of particular
 12 importance is whether application of state law ‘would be inconsistent with the federal policy
 13 underlying the cause of action under consideration’” – in this case, section 1983. *Id.* at 590
 14 (quoting *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 465 (1975)).

15 Defendants contend that the only Arizona statute mentioned in Plaintiff’s First
 16 Amended Complaint, and thus the only Arizona statute that could possibly apply in this case,
 17 is the Arizona wrongful death statute found at A.R.S. § 12-611. *See* Dkt. #7 ¶ 1. This
 18 argument misapprehends the nature of the Court’s inquiry under section 1988. The question
 19 is not what state law has been cited in the complaint, but what state law the Court should look
 20 to in order to provide a remedy for an action under section 1983. When applying the remedy
 21 selection provision of section 1988, the Court must look to “the most closely analogous state
 22 law.” *Bass by Lewis v. Wallenstein*, 769 F.2d 1173, 1188 (7th Cir. 1985).

23 The most closely analogous Arizona law is the survival statute found at A.R.S.
 24 § 14-3110. The First Amended Complaint makes clear that the claim for Mrs. Gotbaum’s
 25 pre-death suffering is asserted only by her estate. Dkt. #7 ¶ 117, Prayer for Relief ¶ (e). The
 26 minor children do not seek to recover such damages, but instead seek to recover damages for
 27 their own loss of “the continued companionship and society of their mother.” *Id.* ¶ 116.
 28 Under Arizona law, a claim under the survival statute may be brought only by a decedent’s

1 estate. *See* A.R.S. § 14-3110; *Gandy v. United States*, 437 F. Supp. 2d 1085, 1087 (D. Ariz.
 2 2006). An estate can also bring a wrongful death claim, but only if no family members of
 3 the decedent survive. *See* A.R.S. § 12-612(A). Because several of Mrs. Gotbaum's family
 4 members survive, her estate cannot bring a wrongful death claim and has a cause of action
 5 only under the survival statute. Thus, the Arizona law that is most closely analogous to the
 6 claim asserted by the estate under section 1983 is the Arizona survival statute.³

7 Arizona's survival statute bars recovery of a decedent's pain and suffering. *See*
 8 A.R.S. § 14-3110. Plaintiffs argue that applying the statute would be contrary to the
 9 compensation and deterrence purpose of section 1983, and that the survival statute therefore
 10 should not be applied in this case.

11 The Supreme Court and Ninth Circuit have not decided this question. *See Robertson*,
 12 436 U.S. at 594-95 ("We intimate no view . . . about whether abatement based on state law
 13 could be allowed in a situation in which deprivation of federal rights caused death"); *Smith*
 14 *v. City of Fontana*, 818 F.2d 1411, 1417 n.7 (9th Cir. 1987) (declining to decide the issue),
 15 *overruled on other grounds by Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1040 n.1 (9th
 16 Cir. 1999). A clear majority of federal cases, however, has concluded that when a violation
 17 of federal civil rights results in death of the victim, state statutes limiting the remedies of the
 18 victim's estate and family members are not consistent with the purposes of section 1983.
 19 *See, e.g., Berry v. City of Muskogee*, 900 F.2d 1489, 1499-1507 (10th Cir. 1990); *Bass*, 769
 20 F.2d at 1187-90; *Jaco v. Bloechle*, 739 F.2d 239, 241-45 (6th Cir. 1984); *Gilbaugh v. Balzer*,
 21 No. Civ-99-1576-AS, 2001 WL 34041889, at *5-7 (D. Or. June 7, 2001); *Garcia v.*
 22 *Whitehead*, 961 F. Supp. 230, 232-33 (C.D. Cal. 1997); *Guyton v. Phillips*, 532 F. Supp.

23
 24 ³ The First Amended Complaint does not identify the legal basis for the claim asserted
 25 by the minor children, but it does mention the wrongful death statute, A.R.S. § 12-611. The
 26 Court assumes that the minor children are suing under this statute. The First Amended
 27 Complaint also could be read, however, as asserting a claim for the minor children under
 28 section 1983. Some courts have suggested that such a claim is not available to family
 members of the decedent because section 1983 establishes liability "to the party injured."
 42 U.S.C. § 1983; *see Andrews v. Neer*, 253 F.3d 1052, 1063-64 (8th Cir. 2001). The Court
 need not address this issue because it has not been raised in Defendants' motion.

1 1154, 1164-66 (N.D. Cal. 1981). Defendants cite the thoughtful opinion of Judge Levi in
 2 *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1131-33 (E.D. Cal. 2002), for the
 3 opposite proposition, but the Court concludes that the majority view is correct.

4 The legislative history of section 1983 makes clear that “Congress intended significant
 5 recompense when a constitutional violation caused the death of the victim. The general
 6 legislative history of the 1871 act makes clear that death was among the civil rights violations
 7 that Congress intended to remedy.” *Berry*, 900 F.2d at 1501. Indeed, “President Grant’s
 8 message to Congress in 1871 described conditions in the South that ‘rendered life and
 9 property insecure’ and urged legislation that would ‘effectually secure life, liberty, property,
 10 and the enforcement of law in all parts of the United States.’” *Id.* at 1502 (quoting Cong.
 11 Globe, 42d Cong., 1st Sess. 236 (1871)) (brackets omitted). “[I]n both Houses [of Congress],
 12 statements of the supporters of [section 1983] corroborated that Congress . . . intended to
 13 give a broad remedy for violations of federally protected civil rights.” *Monell v. Dep’t of*
 14 *Soc. Servs.*, 436 U.S. 658, 685 (1978). The statute was designed to accomplish at least two
 15 purposes – “compensating those injured” and “preventing official illegality.” *Robertson*, 436
 16 U.S. at 592. The Supreme Court has noted that section 1983’s “unique remedy make[s] it
 17 appropriate to accord the statute ‘a sweep as broad as its language.’” *Wilson v. Garcia*, 471
 18 U.S. 261, 272 (1985) (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)), *superseded*
 19 *by statute on other grounds*, 28 U.S.C. § 1658(a).

20 Most courts have concluded that state statutes limiting civil remedies in cases where
 21 a constitutional violation has caused death to the victim simply are not consistent with the
 22 purposes of section 1983. Courts have noted that such state laws “are not suitable to carry
 23 out the full effects intended for § 1983 cases ending in death of the victim; they are deficient
 24 in some respects to punish the offenses.” *Berry*, 900 F.2d at 1506. Courts have also noted
 25 the incongruity of applying a state law that would allow recovery for pain and suffering if
 26 the victim survived the assault, but not if the victim died as a result of it. “The inescapable
 27 conclusion is that there may be substantial deterrent effect to conduct that results in the injury
 28 of an individual but virtually no deterrent to conduct that kills its victim.” *Guyton*, 532 F.

1 Supp. at 1166. Courts have also noted the ever-changing patchwork of state survival and
2 wrongful death statutes and the fact that adopting them will result in different section 1983
3 remedies in different states, and differences even within a single state depending on the
4 nature of the cases: “we must consider that different states will define them differently, thus
5 requiring individual analyses of each state’s law. We might [also] have to find that a state’s
6 law works satisfactorily in some instances, as when there are surviving dependents, but not
7 in other cases, as when there is no one with a right to sue.” *Berry*, 900 F.2d at 1506.

8 As noted above, the Supreme Court has not addressed this question. The Supreme
9 Court did apply a state survival statute to a section 1983 claim in *Robertson*, even though the
10 state statute eliminated the claim after the victim died for reasons unrelated to the violation
11 of his federal rights. 436 U.S. at 590-94. But the Supreme Court specifically noted that its
12 decision was narrow and did not necessarily apply to cases where the civil rights violation
13 caused the death of the victim: “We intimate no view, moreover, about whether abatement
14 based on state law could be allowed in a situation in which deprivation of federal rights
15 caused death.” *Id.* at 594; *see id.* at 592 (concluding that application of state law would not
16 be contrary to section 1983’s goal of deterring official misconduct “at least in situations in
17 which *there is no claim that the illegality caused the plaintiff’s death*”) (emphasis added).
18 The Arizona Court of Appeals drew this same distinction when it applied the remedies of
19 Arizona’s survival statute in a section 1983 case. *See Badia v. City of Casa Grande*, 988
20 P.2d 134, 140-41 (Ariz. Ct. App. 1999) (“Inasmuch as Perez’s death in this case *did not*
21 result from defendants’ alleged use of excessive force, § 14-3110 neither frustrates nor is
22 inconsistent with the policies and purposes of § 1983.”) (emphasis added).

23 Given the broad intent of section 1983, and particularly the fact that Congress sought
24 to provide an effective remedy for unconstitutional killings, the Court concludes that
25 application of the Arizona survival statute and its elimination of pain and suffering damages
26 in cases where death is alleged would be contrary to the purposes of section 1983. The Court
27 therefore will apply a federal remedy that permits the recovery of such damages. *See, e.g.,*
28 *Berry*, 900 F.2d at 1507; *Bass*, 769 F.2d at 1190.

1 The Court hastens to note that this a not situation where deference should be afforded
 2 to policy decisions of state lawmakers. The cause of action under section 1983 is federal,
 3 and the remedy must be selected in accordance with Congress's directive in section 1988.
 4 The sole question, therefore, is whether the remedy of the most closely analogous forum state
 5 law would effectuate the broad purposes of section 1983. Choosing not to apply state law
 6 implies no disrespect for that law, and is not intended to suggest that the Arizona legislative
 7 scheme is somehow deficient for state tort cases. It simply suggests that the Arizona statute
 8 is not well suited to accomplishing the wide remedial objectives section 1983.

9 **IV. Motion to Dismiss the City of Phoenix Police Department.**

10 Defendants ask the Court to dismiss the City of Phoenix Police Department because
 11 it is not a jural entity subject to suit. Dkt. #11. There is no controlling Arizona case on point,
 12 and judges of this Court have reached different conclusions on whether the Maricopa County
 13 Sheriff's Department is a jural entity. *Compare Agster v. Maricopa County*, No. CV-02-
 14 1686-PHX-JAT (March 3, 2005 Order) (declining to dismiss the Maricopa County Sheriff's
 15 Office as a non-jural entity),⁴ *with Wilson v. Maricopa County*, No. CV-04-2873-PHX-DGC,
 16 2005 WL 3054051 (D. Ariz. 2005) (dismissing the Maricopa County Sheriff's Office as a
 17 non-jural entity).

18 The City of Phoenix is a public entity subject to suit. *See* A.R.S. § 12-820, 1984 Laws
 19 Ch. 285, § 1 (recognizing that the purpose of A.R.S. § 12-820 *et seq.* is to abrogate
 20 traditional sovereign immunity with respect to public entities). A public entity is defined as
 21 "this state and any political subdivision of this state." A.R.S. § 12-820. Cities "are political
 22 subdivisions of the state." *City of Tucson v. Fleischman*, 731 P.2d 634, 637 (Ariz. Ct. App.
 23 1984).

24 Plaintiffs argue that the Police Department is also a political subdivision under the test
 25 established in *McClanahan v. Cochise College*, 540 P.2d 744 (Ariz. Ct. App. 1975).

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 27 ⁴ The same judge clarified in *Heath v. Maricopa County*, No. CV05-1362-PHX-JAT,
 28 2007 WL 1526430, at *2 (D. Ariz. May 23, 2007), that in *Agster*, the Maricopa County
 Sheriff's Office and the Sheriff in his official capacity were treated as a single entity for
 purposes of the verdict.

1 *McClanahan* states that “[t]he attributes which are generally regarded as distinctive of a
 2 political subdivision are that it exists for the purpose of discharging some function of local
 3 government, that it has a prescribed area, and that it possesses authority for a subordinate
 4 self-government by officers selected by it.” *Id.* at 747. The Police Department satisfies each
 5 of these criteria, but so do many offices within city government. Plaintiffs’ argument would
 6 suggest that many parts of the City’s operation constitute separate political subdivisions
 7 subject to suit. The Court cannot agree with so broad a proposition, particularly when
 8 *McClanahan* did not concern whether an entity is subject to suit. Neither the Arizona
 9 legislature nor the City has stated that the Police Department is a separate jural entity.⁵

10 Consistent with its previous decision in *Wilson*, the Court concludes that the Phoenix
 11 Police Department is a subpart of the City of Phoenix, not a separate entity for purposes of
 12 suit. *See Wilson*, 2005 WL 3054051, at *2 (dismissing the Maricopa County Sheriff’s Office
 13 because it is not a jural entity separate from Maricopa County). Other cases support this
 14 conclusion. *See Pierre v. Schlemmer*, 932 F. Supp. 278, 280 (M.D. Fla. 1996) (“Where a
 15 police department is an integral part of the city government as the vehicle through which the
 16 city government fulfills its policing functions, it is not an entity subject to suit.”) (citation
 17 omitted); *Jacobs v. Port Neches Police Dep’t*, 915 F. Supp. 842, 844 (E.D. Tex. 1996)
 18 (sheriff’s department was not a proper party to the suit because the county had not expressly
 19 “grant[ed] the servient agency with jural authority”) (citation omitted); *Sullivan v.*
 20 *Chastain*, No. Civ.A.SA04CA0803XR, 2005 WL 354032, at *2 (W.D. Tex. Jan. 4, 2005)
 21 (dismissing the City of Bandera Police Department because “an entity without a separate
 22 jural existence is not subject to suit”); *see also Del Tufo v. Twp. of Old Bridge*, 650 A.2d
 23 1044, 1046 n.1 (N.J. Super. Ct. App. Div. 1995) (“Old Bridge Township Police Department’
 24 is probably not a jural entity and is therefore probably not subject to suit in its own name.”).

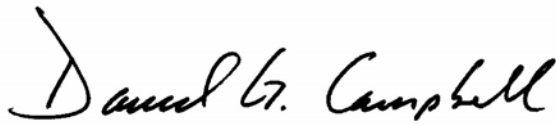
25
 26 ⁵ Plaintiffs cite Chapter III, § 3 of the Phoenix City Charter to support their argument,
 27 but this section merely establishes that the City may create, change, and abolish offices,
 28 departments, agencies, boards, and commissions. The section does not mention the Police
 Department, and nothing in it suggests that the section was designed to identify separate jural
 entities within the City’s organizational structure.

1 Plaintiffs have sued the City of Phoenix and the individual defendants. Dismissal of
2 the Police Department will not deprive them of any remedy to which they are entitled.

3 **IT IS ORDERED:**

- 4 1. Plaintiffs' motion to transfer venue (Dkt. #13) is **denied**.
5 2. Defendants' motion to dismiss pre-death suffering claims (Dkt. #12) is **denied**.
6 3. Defendants' motion to dismiss the City of Phoenix Police Department as a
7 non-jural entity (Dkt. #11) is **granted**.
8 4. The Court will schedule a Rule 16 case management conference by separate
9 order.

10 DATED this 17th day of October, 2008.

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14 _____
15 David G. Campbell
16 United States District Judge
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